Postal Regulatory Commission Submitted 10/29/2019 1:35:41 PM Filing ID: 110847 Accepted 10/29/2019

## BEFORE THE POSTAL REGULATORY COMMISSION WASHINGTON, D.C. 20268-0001

MARKET-DOMINANT PRICE CHANGE ) Docket No. R2020-1

## COMMENTS OF MPA – THE ASSOCIATION OF MAGAZINE MEDIA

## October 29, 2019

MPA – The Association of Magazine Media appreciates this opportunity to comment on the Postal Service's Notice of Market-Dominant Price Change. Docket No. R2020-1 (October 9, 2019) ("USPS Notice"). In response to Order No. 5273, MPA respectfully comments on the Postal Service's proposed price increase for Periodicals Outside County mail. See USPS Notice at 30.

Unfortunately, the USPS Notice presents a case of *déjà vu* all over again. As it did last year, the Postal Service attributes Periodicals' cost coverage problems to a "lack of adequate pricing flexibility" and on the "limited tools currently available" to it. *Compare* Docket No. R2019-1, USPS Notice of Market-Dominant Price Change (October 10, 2018) at 25 *with* Docket No. R2020-1, USPS Notice, at 30.1 But, as MPA and other business

<sup>1</sup> The only discernible difference between last year's rate change notice and this year's

The Postal Service's proposed price hike on Periodicals Mail and its too-low Carrier Route Basic passthrough rate violate statutory objectives 1, 2, 8 and factors 1, 3, 5, 8, and 11.

notice with respect to Periodicals Mail is that this year – in an apparent nod to the D.C. Circuit's decision in *Carlson v. PRC*, 938 F.3d 337 (D.C. Cir. Sept. 13, 2019) – the Postal Service included parenthetical references to a minority of PAEA's statutory objectives and factors. See 39 U.S.C. §§ 3622(b)-(c). *Carlson*, however, holds "that the PAEA requires consideration of *all* relevant statutory objectives and factors as part of the regulatory process and does not authorize the Commission to defer evaluation of those objectives and factors until after it approves a rate change." 938 F.3d at 343 (emphasis added).

mailers have explained repeatedly, "lack of pricing flexibility" is not the problem. See Docket No. R2019-1, Comments of MPA (October 30, 2018) at 1; Docket No. RM2017-3, Comments of ANM *et al.* (March 1, 2018) at 85-101. Moreover, the Postal Service *does* have tools available to it that can ameliorate the Periodicals Mail cost coverage situation: it can better control flats costs and it can promote efficient mail preparation by passing through 100 percent of Carrier Route Basic cost avoidance. Thus, MPA again urges the Commission to "maximize incentives to reduce costs and increase efficiency" (objective 1) by requiring the Postal Service to propose a rate design that includes a much higher Carrier Route Basic passthrough that aligns with the passthrough rate for Machinable, Automation 5-Digit Flats.

In this proceeding, the Postal Service proposes a 14.0 cent Carrier Route Basic discount (relative to its Machinable Nonautomation 5-Digit Flat benchmark), which passes through only 62 percent of the 22.7 cents that the Postal Service avoids due to this preparation.<sup>2</sup> This falls far short of the 100 percent passthrough that the Commission again explained in its FY 2018 Annual Compliance Determination (ACD) would promote efficiency.

[P]rices that yield more passthroughs closer to 100 percent would further promote Periodicals pricing efficiency. Discounts are most efficient when they are set at their corresponding avoided costs. Passthroughs set under 100 percent generally reflect a situation where the discount offered to mailers is less than the Postal Service's avoided cost. A discount that is "too small" discourages efficiency if a mailer could perform the work at a lower cost than the Postal Service, but does not do so because the cost to

<sup>&</sup>lt;sup>2</sup> USPS Notice (October 9, 2019) at Attachment B R2020-1.xls, "Periodicals Outside County", row 10.

the mailer for performing the work required to receive the discount exceeds the amount of the discount.<sup>3</sup>

Furthermore and in direct contravention of Commission rule 3010.12(b)(6), which requires that "[t]he Postal Service shall identify and explain discounts that are set substantially below avoided costs," the Postal Service provided no justification at all for this "substantially below avoided cost" discount.

Making the "substantially below avoided cost" Carrier Route Basic discount even more problematic is that it affects a large amount of volume. More than 60 percent of Periodicals Outside County volume is entered at the Carrier Route Basic rate and most of the remainder (20 percent of Periodicals Outside County volume) is entered at the Machinable Automation 5-Digit Flat rate<sup>4</sup> and would likely shift to the Carrier Route Basic rate with an appropriate discount.

[T]he low passthrough underlying the Carrier Route Basic discount has limited the growth in co-mailing and caused flats processing to be more costly for the USPS than it should be. Passing through the entire Carrier Route Basic cost avoidance would result in massive growth in the number of publishers and marketers that participate in co-mailing, and a substantial improvement in the end-to-end efficiency of the flats mailstream overall.<sup>5</sup>

Furthermore, when calculated relative to a Machinable Automation 5-Digit Flat benchmark, the Carrier Route Basic passthrough is even lower – 56 percent and only marginally higher than the 52 percent in FY 2018.<sup>6</sup>

<sup>&</sup>lt;sup>3</sup> Docket No. ACR2018, Annual Compliance Determination Report, Fiscal Year 2018 (FY 2018 ACD), at 20.

<sup>&</sup>lt;sup>4</sup> USPS-LR-R2020-1-3 Periodicals, USPS-CAPCALC-PER-R2020.xlsx, "Outside County Adjustments" & "Summary".

<sup>&</sup>lt;sup>5</sup> Docket No. RM2017-3, Declaration of Quad/Graphics, March 20, 2017, at 3.

<sup>&</sup>lt;sup>6</sup> Compare Docket No. ACR2018, Mail Processing and Delivery costs and prices for Machinable Automation 5D Flats and Carrier Route Basic, USPS-FY18-3 *with* Docket No. R2020-1, USPS Notice (October 9, 2019) at Attachment B R2020-1.xls.

The Commission recognized the importance of the relationship between the Carrier Route Basic and Machinable Automation 5-Digit Flat rates in its Annual Compliance Determination, citing approvingly to its observation that the passthroughs underlying these two discounts were similar in FY 2018. "In FY 2018, the gap between the passthroughs for Machinable Automation 5-Digit and Carrier Route shrunk considerably."

This Commission observation was flawed because both the USPS and PRC miscalculated the Carrier Route Basic cost avoidance and passthrough in the FY 2018 Annual Compliance Review process.<sup>8,9</sup> As Figure 1 below shows, the corrected FY 2018 passthrough for Carrier Route Basic was 20 percentage points below that for Machinable Automation 5-Digit Flats. And the Postal Service now proposes to increase the passthrough gap further, to 31 percentage points.

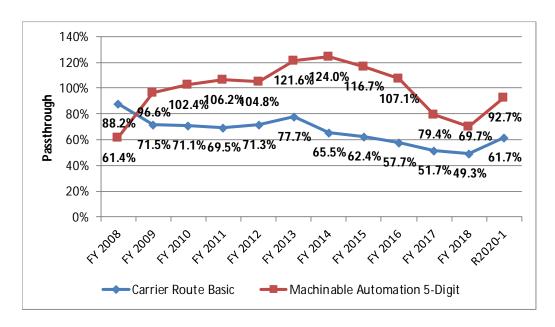
.

<sup>&</sup>lt;sup>7</sup> FY 2018 ACD at 20.

<sup>&</sup>lt;sup>8</sup> Docket No. ACR2018, Comments of MPA – The Association of Magazine Media and the Alliance of Nonprofit Mailers (February 14, 2019) at 5, fn 4.

<sup>&</sup>lt;sup>9</sup> Docket No. RM2019-4, Order No. 5095 – Notice of Proposed Rulemaking on Periodicals Outside County Carrier Route Basic Flats (May 15, 2019).

Figure 1. Periodicals Outside County Carrier Route Basic and Machinable Automation 5-Digit Flat Passthroughs



Source: FY 2008 – FY 2018, Docket No. RM2019-4, Order No. 5095, 2018 Periodicals Workshare\_RM.xlsx, "CR & 5D Passthroughs"; R2020-1, Docket No. R2020-1, United States Postal Service Notice of Market-Dominant Price Change, October 9, 2019, Attachment B R2020-1.xls, "Periodicals Outside County".

Despite its awareness of the issue, the Commission has for the last decade allowed the Postal Service to inefficiently set the Carrier Route Basic discount substantially below both 100 percent and the passthrough for Machinable Automation 5-Digit Flat. Now is the time for the Commission to move from simply observing and opining on inefficiencies in the Postal Service's Periodicals Outside County rate design to requiring the Postal Service to fix the problem.

Respectfully submitted,

Eric S. Berman VENABLE LLP 600 Massachusetts Avenue, N.W. Washington DC 20001

(202) 344-4661

esberman@venable.com

Counsel for MPA-The Association of Magazine Media

October 29, 2019